



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2012 REGULAR SESSION

HOUSE JOINT RESOLUTION NO. 11

THURSDAY, MARCH 1, 2012

The following joint resolution was reported to the Senate from the House and ordered to be printed.

RECEIVED AND FILED
DATE March 28, 2012
2:50 pm

ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY Alm Perry

1 A JOINT RESOLUTION regarding the criteria for selection and approval of Clean
2 Water Act 404 mitigation plans for out-of-kind water quality improvements.

3 WHEREAS, the FY 2011 annual report of the two in lieu fee programs authorized
4 in Kentucky—Kentucky Department of Fish and Wildlife and Northern Kentucky Stream
5 and Wetland Restoration Fund—reported a fund balance of \$36,957,734 and \$13,178,046
6 respectively to spend on projects to mitigate damage caused to streams, wetlands, and
7 aquatic resources due to adverse impacts from activities undertaken pursuant to Section
8 404 or other Department of Army permits authorized by the federal Clean Water Act; and

9 WHEREAS, stream and wetland mitigation may be commenced by making
10 improvements to the physical characteristics of the stream and riparian zone, or by
11 restoring the biological or chemical characteristics of the water; and

12 Whereas, the Interagency Review Team (IRT), established pursuant to an agreement
13 with the United States Army Corps of Engineers (USACE) to make award of (ILF) funds
14 for mitigation projects, does not have the authority and cannot approve sewer line and
15 straight pipe projects and will only make awards where water quality has not been
16 degraded; and

17 WHEREAS, the USACE may, if applicable, allow up to 25 percent of the
18 mitigation funds for sewer line and straight pipes in the county where the permittee had
19 operated as part of the overall mitigation plan, but only if that project is submitted as
20 permittee-responsible project and only when the project is approved by USACE; and

21 WHEREAS, water pollution problems which are largely attributable to sewerage
22 issues such as straight pipes, septic systems and old or inadequate sewer infrastructure are
23 serious issues in Eastern Kentucky; and

24 WHEREAS, because the criteria for candidate mitigation sites is rigorous and the
25 extremely low conductivity standard in Appalachia reduces the number of eligible
26 streams in the same county where the permittee operated, encouraging more permittee
27 responsible mitigation with set aside for sewer and straight pipe improvements ensures

1 the approval of more projects that afford meaningful value to the Commonwealth, other
2 than stream restoration;

3 NOW, THEREFORE,

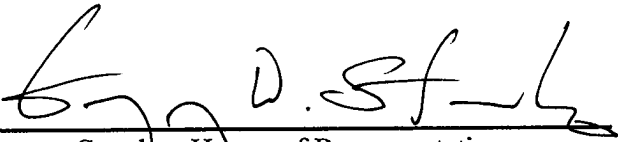
4 ***Be it resolved by the General Assembly of the Commonwealth of Kentucky:***

5 ➔Section 1. The Kentucky General Assembly strongly encourages all Section 404
6 permittees that utilize permittee responsible mitigation to include as part of the overall
7 mitigation plan, a 25 percent set aside for sewer and straight pipe improvements in the
8 county where the permittee operates. The Energy and Environment Cabinet shall compile
9 a list of sewer and straightpipe projects that have been approved by USACE for
10 mitigation, the waters that will be affected by those improvements and the progress in
11 achieving the goals of this section. The cabinet shall make a written report of those
12 findings to the Legislative Research Commission and the committee of jurisdiction not
13 later than June 15, 2013 and every year thereafter.

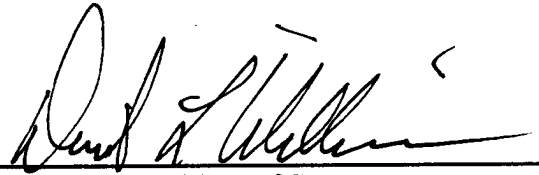
14 ➔Section 2. The Kentucky General Assembly directs the Kentucky Energy and
15 Environment Cabinet to work with the University of Kentucky and University of
16 Louisville to develop guidelines to determine the percentage value of a proposed out-of-
17 kind mitigation project to the overall mitigation requirements imposed on the permittee.

18 ➔Section 3. The Kentucky General Assembly respectfully requests that the
19 Kentucky Congressional delegation amend the Clean Water Act to prohibit the United
20 States Environmental Protection Agency and the United States Army Corps of Engineers
21 from imposing a discriminatory standard for conductivity that results in the Appalachian
22 regions being excluded from benefits entitled to them under law.

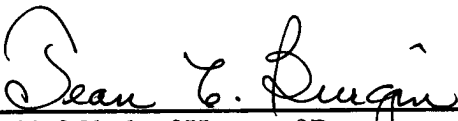
23 ➔Section 4. A copy of this Resolution shall be sent to James Townsend,
24 Operations Branch, Regulatory Division, United States Army Corps of Engineers,
25 Louisville, KY 40201; Secretary Lenn Peters, Energy and Environment Cabinet, 500
26 Mero Street, 5th Floor, Frankfort, Kentucky 40601; and to each member of the Kentucky
27 congressional delegation.



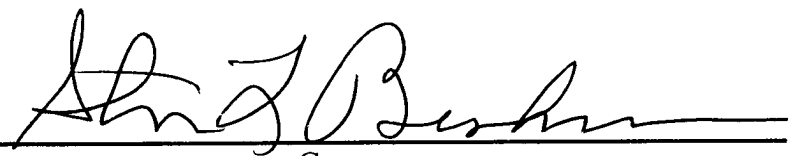
Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 3-28-12